Supreme Court, U. S.
FILED
SEP 14 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-248

UNITED STATES, EX REL FRANK L. SESSOMS
Petitioners" Pro Se in Error
v.
REDEVELOPMENT AUTHORITY OF BEAVER COUNTY, BEAVER, PENNA./STEVEN PETZ, L. S. PATTON, JACK MALONE, NORMAN MOWAD, FRANK C. SERNA, ANDREW J. MATIYAK AND HAMPTON GRANT
Respondents" in Error

UNITED STATES, EX REL FRANK TANGORA
Petitioners" Pro Se in Error
v.
REDEVELOPMENT AUTHORITY OF BEAVER COUNTY, BEAVER, PENNA./STEVEN PETZ, L. S. PATTON, JACK MALONE, NORMAN MOWAD, FRANK C. SERNA, ANDREW J. MATIYAK AND HAMPTON GRANT
Respondents" in Error

MOTION TO DISMISS APPEAL

Lee E. Whitmire Jr.
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Federal Title & Trust Bldg.
Beaver Falls, PA 15010

MOTION TO DENY AND DISMISS APPEAL

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Appellees, THE REDEVELOPMENT AUTHORITY OF THE COUNTY OF BEAVER, STEVEN PETZ, L. S. PATTON, JACK MALONE, ANDREW J. MATIYAK AND HAMPTON GRANT, by their undersigned Attorney, respectfully request the Honorable Supreme Court of the United States to deny and dismiss the Appeal taken by the Appellants at the above number and term for the following reasons stated herein:

1. That on March 8, 1978, Judge Hubert I. Teitelbaum, of the District Court for the Western District of Pennsylvania, entered a Final Memorandum and Order dismissing the cases docketed at No. 78-76 and 78-115 for the reasons stated in his Memorandum and Order in

the case captioned, Frank Tangora and Frank L. Sessoms and Catherine Sessoms, his wife, versus Steven Petz, Hampton Grant, L. S. Patton, Andrew J. Matiyak, Jack Malone and Norman Mowad, Civil Action 77-2, Western District of Pennsylvania, August 5, 1977.

2. That in the case docketed in the District Court for the Western District of Pennsylvania at No. 78-76, the Appellant, Frank L. Sessoms was the named Plaintiff and by mere whim, attempted to make the United States a party Plaintiff merely by adding its name to the caption of the litigation.

3. That in the case docketed at No. 78-115 in the District Court for the Western District of Pennsylvania, one Frank Tangora who is not a party to this Appeal was the party Plaintiff and by mere whim added the United States as a party merely by adding its name to the caption of the case.

4. That there is no authority, statute or provision in law for the Plaintiffs in the above captioned cases to have made the United States a party to a suit, nor has the United States ever been a party to the aforesaid actions.

5. That on June 14, 1978, the Appellant, Frank L. Sessoms took an Appeal from the District Court's Memorandum and Order of March 8, 1978, in the cases numbered 78-76 and 78-115, even though the Appellant Frank L. Sessoms was not even a party in the case docketed at No. 78-115.

6. That 28 U.S.C.A., Section 2101, provides that:

> (a). A direct appeal to the Supreme Court from any decision under Sections 1252, 1253 and 2282 of this title, holding unconstitutional in whole or in part, any Action of Congress, shall be taken within thirty (30) days after the entry of an interlocutory or final order, judgment or decree. The record shall be made up in the case docketed within sixty (60) days from the time such appeal is taken under Rules prescribed by the Supreme Court.
>
> (c). Any other appeal or any other writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety (90) days after the entry of such judgment or decree. Any justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty (60) days.

7. That the Appellant has based jurisdiction of this appeal to the Supreme Court of the United States on 28 U.S.C.A., Section 1252, which provides:

> Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam and the District Court of the Virgin Islands and any Court of record of Puerto Rico, holding an Active Congress unconstitutional in any civil action suit or proceedings to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party.

8. That because there is no authority whatsoever for the Appellant,

Frank L. Sessoms, to have made the United States a party to this suit nor did the United States ever intervene in this suit, the jurisdictional statement upon which the Appellant relies to present this appeal has no basis whatsoever. Jurisdiction under 28 U.S.C.A., Section 1252, is only applicable when the United States or any of its agencies or officers or employees is a party to the suit and an act of Congress was held to be unconstitutional. Further, there was no holding by Judge Teitelbaum in the aforesaid actions that any act of Congress was unconstitutional.

9. That the time limit for taking the appeal under Section 1252 as provided by 28 U.S.C.A., Section 2101, was sixty (60) days from the entry of the final order. That since the sixty (60) day appeal period expired on May 8, 1978, before the Notice of Appeal was filed in the District Court for the Western District of Pennsylvania on June 14, 1978, not only is jurisdiction lacking in this appeal, but the appeal was intimely filed.

Wherefore, the Appellees respectfully request the Honorable Court to deny and dismiss the Appellant's Appeal.

RESPECTFULLY SUBMITTED:

Lee E. Whitmire, Jr.

Lee E. Whitmire, Jr.,
Attorney for the Redevelopment Authority
of the County of Beaver

A F F I D A V I T

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF BEAVER :

Before me, the undersigned authority, personally appeared CAROLE L. BLAIR, and after first being duly sworn according to law deposes says that:

1. She is the secretary to Lee E. Whitmire, Jr., the Attorney for the Redevelopment Authority of the County of Beaver.

2. That on September 13, 1978, in her official capacity as secretary to Lee E. Whitmire, Jr., she deposited a sealed envelope, addressed to Frank L. Sessoms, 1461 Green Street, Aliquippa, PA 15001, prepaid, in a United States mailbox and that said envelope contained three (3) copies of the Motion to Dismiss Appeal on Behalf of the Appellee, the REDEVELOPMENT AUTHORITY OF THE COUNTY OF BEAVER.

CAROLE L. BLAIR

Sworn to and subscribed before me this 13th day of September, 1978.

Notary Public

ILA McPEAK, NOTARY PUBLIC
BEAVER FALLS, BEAVER COUNTY
MY COMMISSION EXPIRES SEPT. 29, 1981
Member, Pennsylvania Association of Notaries